

07 CV 3254

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ALFRED MEYERS, INC.,

Plaintiff,

-against-

D'ANNUNZIO & CO, LLC,
D'ANNUNZIO & CO, INC.,
D'ANNUNZIO DISTRIBUTION, INC. and
PHILART, INC.

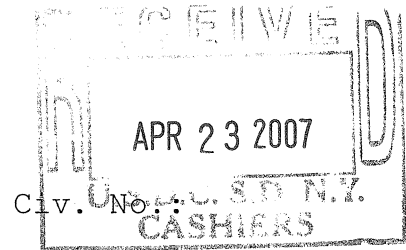
Defendants.
-----x

Plaintiff, ALFRED MEYERS, INC., by its attorneys, Moss & Kalish, PLLC, as and for its complaint against the defendants, D'ANNUNZIO & CO, LLC, D'ANNUNZIO & CO, INC., D'ANNUNZIO DISTRIBUTION, INC. and PHILART, INC. (together, "D'Annunizio"), alleges as follows:

The Parties

1. Plaintiff, ALFRED MEYERS, INC. is a New York corporation with a principal place of business at 608 Fifth Avenue, New York, New York, 10020.

2. Upon information and belief, defendant, D'ANNUNZIO & CO, LLC is a New Jersey limited liability company with a principal place



COMPLAINT

**TRIAL BY JURY
DEMANDED**

of business at 60 G Commerce Way, Totowa, New Jersey 07512.

3. Upon information and belief, defendant, D'ANNUNZIO & CO, INC. is a New Jersey corporation with a principal place of business at 60 G Commerce Way, Totowa, New Jersey 07512.

4. Upon information and belief, defendant, D'ANNUNZIO DISTRIBUTION, INC. is a New Jersey corporation with a principal place of business at 60 G Commerce Way, Totowa, New Jersey 07512.

5. Upon information and belief, defendant, PHILART, INC. is a New Jersey corporation with a principal place of business at 60 G Commerce Way, Totowa, New Jersey 07512.

Jurisdiction and Venue

6. This Court has jurisdiction pursuant to 28 U.S.C. §1332(a). The amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. Venue is proper in this district pursuant to 28 U.S.C. §1391(a).

AS AND FOR A FIRST CAUSE OF ACTION
(GOODS SOLD AND DELIVERED)

8. D'Annunzio owes plaintiff \$99,072.05 for goods sold, delivered and accepted by D'Annunzio.

9. By reason of the foregoing, plaintiff has been damaged in

the amount of \$99,072.05.

AS AND FOR A SECOND CAUSE OF ACTION
(UNJUST ENRICHMENT)

10. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "9" of the complaint as if more fully set forth at length herein.

11. At the request of D'Annunzio, D'Annunzio received goods from the plaintiff.

12. The goods had a reasonable value of not less than \$99,072.05.

13. D'Annunzio has refused and failed to pay plaintiff for the value of the goods.

14. D'Annunzio has been unjustly enriched.

15. By reason of the foregoing, plaintiff has been damaged in the amount of \$99,072.05.

AS AND FOR A THIRD CAUSE OF ACTION
(ACCOUNTS STATED)

16. Plaintiff repeats and realleges paragraphs "1" through "15" hereof as if more fully set forth herein.

17. Plaintiff rendered and delivered statements of account to D'Annunzio for the sums due and owing by D'Annunzio

for the goods sold and delivered by plaintiff and accepted by D'Annunzio.

18. D'Annunzio has not disputed any of the statements of account they received from plaintiff.

19. As a result, an account stated has been created between the plaintiff and D'Annunzio in the sum of \$99,072.05 no part of which has been paid although duly demanded.

20. By reason of the foregoing, plaintiff has been damaged in the amount of \$99,072.05.

Prayer for Relief

WHEREFORE, plaintiff prays that this Court:

a. On plaintiff's first, second and third causes of action, award plaintiff damages in the amount of \$99,072.05;

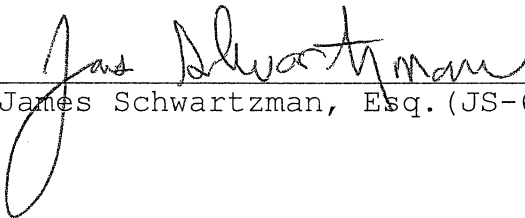
b. Award plaintiff interest, legal fees, costs and expenses; and

c. Award plaintiff such other and further relief as

is just and proper under the circumstances.

DATED: New York, New York
April 23, 2007

MOSS & KALISH, PLLC
Attorneys for Plaintiff
122 East 42nd Street-Suite 2100
New York, New York 10168
(212) 867-4488

By: 
James Schwartzman, Esq. (JS-6605)